

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-555-C - ORDER NO. 92-3
JANUARY 8, 1992

IN RE: Request of Southern Bell for)	
Approval of Revisions to its)	ORDER DENYING
General Subscriber Services)	RECONSIDERATION
Tariff to Introduce MemoryCall)	
Service and to Obtain Approval)	
of the Intrastate Components)	
Thereof.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on a Petition for Reconsideration and an Amended Petition for Reconsideration, both filed by Southern Bell Telephone & Telegraph Company (Southern Bell or the Company).

On December 17, 1991, the Commission voted to deny revisions to Southern Bell's General Subscriber Services Tariff, which would have allowed the Company to introduce MemoryCall as a new service offering. On December 20, 1991, Southern Bell filed its first Petition for Reconsideration. On December 27, 1991, this Commission issued its Order No. 91-1152, which reduced the Commission's decision to writing. Subsequently, on January 6, 1992, Southern Bell filed its Amended Petition for Reconsideration.

First, with regard to Southern Bell's original Petition for Reconsideration filed on December 20, 1991, this Commission finds that the Amended Petition filed subsequent to the issuance of Order No. 91-1152 supercedes Southern Bell's original Petition. We will,

therefore, not consider the original Petition, except as it is incorporated by reference into the Amended Petition.

Second, with regard to the Amended Petition, Southern Bell objects to the Commission finding as a fact that the witnesses presented by the South Carolina Association of Telephone Answering Service (SCATAS) were experts in the limited areas of the telephone answering service business and their dealings with Southern Bell in that context. Despite the fact that the witnesses may have originally been presented as lay witnesses, the South Carolina Rules of Civil Procedure allow the Commission to hear from witnesses which it considers experts in the field. South Carolina Rule of Civil Procedure 43(m)(1) states as follows:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Clearly the Commission had the right to the opinion of the telephone answering service witnesses in this case. Clearly, the telephone answering service witnesses were experts in the area, due to their experience in the field. The Commission's ruling in this regard is consistent with South Carolina Rule of Civil Procedure 43(m)(1), as well as Commission Regulation 103-869(c) and 103-870.

Southern Bell makes a non-specific reference to a rule of evidence which limits the potential appointment of experts by a Court on its own motion. Because of Southern Bell's non-specificity, however, we must dismiss the reference.

Further, it should be noted that under our Regulation 103-869(c) even if the witnesses were mere lay witnesses, said witnesses would be entitled to render their opinions. The Commission is convinced, however, that by experience, SCATAS witnesses Bates, Bagwell and Dallas were experts in the limited field of telephone answering service businesses and their relationships with Southern Bell. Clearly, these witnesses' opinions were based on many years of dealing with Southern Bell as a Company. The witnesses were intimately familiar with Southern Bell's procedures and, in our opinion, through their experience, could give expert opinions based on the solid ground of experience. The Commission found this evidence extremely competent in the case.

Southern Bell alleges that the Commission has a duty to determine that the public convenience is currently being served by the existing telephone answering service providers. Southern Bell cites the case of Welsh v. South Carolina Public Service Commission, 391 S.E. 2d 556 (S.C. 1990) for this proposition. The Commission believes that the Welsh opinion may be distinguished from the case at bar. It should be noted that Welsh was a transportation case, with the major controversy being grounded in S.C. Code Ann. §58-23-330. This section discusses the situation where an applicant applies for a certificate to operate as a motor vehicle common carrier. The case at bar is governed by S.C. Code Ann. §58-9-520 and §58-9-540 which relate to changes in telephone rates initiated by the utility. There is no requirement under these statutes that an applicant or anyone else show that the

public convenience is currently being served by the existing providers. Further, the additional holdings in the Welsh case, relating to the necessity for statewide testimony and for statistical bases are inapplicable to the present case. The Commission had the right to rely upon detrimental impact to the telephone answering service companies as a ground for their decision as the case was not governed by Welsh.

With regard to Southern Bell's allegation that the Commission failed to follow the Federal Communications Commission (FCC) rulings, it should be noted that the Commission's underlying facts must be aimed towards intrastate telephone functions, not interstate as the Federal Communication Commission must do. The Public Service Commission of South Carolina simply has no jurisdiction over interstate functions. Southern Bell's allegation as to the incorrectness of the Commission's failure to make a holding is not well placed, since the Commission can only govern intrastate matters.

In addition, Southern Bell states that the Commission failed to give a concise and explicit statement of the underlying facts supporting its findings as required by S.C. Code Ann. §1-23-350. It should be noted that the Commission's underlying facts are specifically stated so that the detrimental impact on the telephone answering service companies is fully explained. Further, Southern Bell complains about the small number of findings and their "obvious simplicity" as being totally insufficient to support the conclusions of law which follow. To the best of our knowledge,

there is no holding as to what particular number of findings may be required to support any particular conclusions of law. Also, it would seem to us that Southern Bell would welcome simplicity in today's complicated legal world. It is our opinion that our findings and conclusions were sufficient in Order No. 91-1152.

Lastly, Southern Bell incorporates its original Petition for Reconsideration of December 20, 1991, by reference into its January 6, 1992, Petition. It should be noted that the December 20, 1991 Petition was non-specific. This Petition contained a number of allegations of violation of various and sundry constitutional and statutory provisions. However, the allegations lack specificity. For example, the Petition fails to delineate how the Commission allegedly deprives Southern Bell of its property interest in violation of the Constitutions of South Carolina and these United States. These allegations must be dismissed because of their non-specificity in violation of the requirements of S.C. Code Ann. §58-9-1200. Further, any other grounds for reconsideration not addressed herein must be denied.

In summary, this Commission believes that its Order No. 91-1152 meets all constitutional and statutory requirements, was made upon lawful procedure, was correct in view of the reliable probative and substantial evidence on the whole record, and was neither arbitrary, capricious, nor characterized by an abuse of discretion, nor a clearly unwarranted exercise of discretion. Order No. 91-1152 must therefore be affirmed and Southern Bell's Amended Petition for Reconsideration denied.

IT IS THEREFORE ORDERED:

1. That Southern Bell's Amended Petition for Reconsideration is hereby denied.

2. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)